



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/160677

PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a telephone hearing was held on October 09, 2014.

The issue for determination is whether the agency correctly determined that a \$6,924.61 Child Care overpayment occurred due to agency error.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Destiny Cooper

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was employed, but stopped working effective December 22, 2013. Petitioner qualified for Child Care Assistance when she was working.

3. Petitioner reported to the agency that she had stopped her employment. The agency failed to inform Petitioner that she would no longer receive Child Care Assistance because she was no longer in an approved activity. Prior notices the agency sent Petitioner stated that she had to be in an approved activity, in order to receive Child Care Assistance.
4. The agency failed to stop payments to the daycare provider when Petitioner reported that she had stopped working. Petitioner's children remained enrolled in Child Care between December 22, 2013 and February 9, 2014. They were an enrollment base authorization meaning the daycare received payment regardless of whether the children attended daycare on a particular day. Petitioner was not working during this time period.
5. The agency paid Petitioner's daycare provider \$6,924.61 between December 30, 2013 and February 9, 2014 when Petitioner was not employed and not in an approved activity.
6. On September 20, 2014 the agency sent Petitioner an overpayment notice stating that there was an overpayment of \$6,924.61 due to agency error in determining eligibility.

DISCUSSION

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1m). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. *Child Day Care Manual*, §2.5.0. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.3.1. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm> (last viewed October 2014).

In this case, Petitioner does not contest several things. Petitioner does not dispute that she lost her job and that she was not an approved activity. She also does not contest the amount paid by the agency to her daycare provider during the overpayment time period. Petitioner argues that the overpayment is not her fault, and therefore she should not be responsible for the repayment. The agency found that the overpayment was the result of agency error, however, nonetheless the statutes and policies direct the agency to recover overpayments from clients that are the result of agency error.

CONCLUSIONS OF LAW

The agency correctly assessed a Child Care overpayment in the amount of \$6,924.61 from December 22, 2013 through February 28, 2014.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

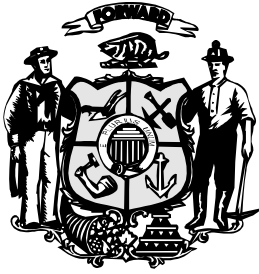
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of October, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 14, 2014.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud